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Application/Control Number: 10/810,287
Art Unit 1724

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TC 1700

**Reply to Office Action Summary
Postmarked April 20, 2005**

Specification

1. In regard to examiner requests, applicant cancels all new matter introduced in the amendment filed on March 16, 2005. Applicant has provided an amended patent specification based upon the Original Patent Application, 10/810,287 filed 03/27/2004. The current specification is amended as required by the Office Action Summary.
2. The wording is cancelled from the application.

Drawings

3. The drawings 8 & 9 are also cancelled, and we revert to the attached amended patent specification based on the original Patent Application 10/810,287 filed 03/27/2004.

Claim Objections

4. The appropriate correction for the informalities has been made in the amended specification attached.

Claim Rejections

- 5-21. The claims have been amended with clear, concise and exact terms, which describe the subject matter regarded as the invention.
22. Based upon the current amended application, in response to the Office Action Summary, we believe that the application for patent is unique and we are the first

and original inventor, and request that you consider the amended application.

The claims presented in the specification have not been previously described per 35 USC § 102. We have reviewed the prior art specified by the examiner and have responded to each claim rejection below.

23. Examiner has noted that Claim 1 being anticipated by Mattson, Jr. et al. (US Pat No 6,760,931). In reviewing Mattson, Jr, we are not able to discover examiner's (col. 13, lines 13-14) which read "comprising rounded first, etc ...". Instead, we find col. 13, lines 12-14 to read, "The faceplate is thus mounted inside tub 6. The faceplate **21** is preferably square but could have any shape. "

We do not agree that Mattson anticipated the skimmer intake guard, or rectangular frame, as Mattson is specific to a bathroom whirlpool tub.

24-25. Examiner has rejected claims as being disclosed in prior art in Altschul (US Pat No 4,429,429).

We have reviewed the prior art as provided by Altschul (US Pat No 4,429,429). We disagree that the claims should be rejected as obvious at the time of Altschul, based upon the following:

Altschul (Col 8, lines 8-35) **DOES NOT** "disclose a rectangular-shaped member (98), comprising of first, second, third and fourth members in the shape of a skimmer intake flange", as indicated by the examiner. Instead Altschul discloses "the grate (98) comprises a frame (102) The frame (102) comprises top and bottom horizontal members, which support a plurality of vertical bars (104)" **only**. Therefore, **a full rectangular frame is not described**, and could not be described, as the plurality of vertical bars are compressed against the horizontal members,

by means of spring mounts, which are multiple purpose. One, to hold the grate or brush cleaner in place and two, to adjust for different heights of skimmer openings, by compressing more or less of the spring, and another to allow the grate to be easily pulled out from the opening after cleaning, as it is not attached, but simply under spring pressure, as it rests in the opening during pool cleaning.

In addition, we disagree that Altschul could have used rounded cross members, based on the following:

Altschul discloses “bars (104) function not only to allow the pool cleaning device to bypass the skimmer opening 100 but also **to scrape off** (bold emphasis added) and dislodge dirt near the skimmer”. The definition of **scrape** is: To remove (an outer layer, for example) from a surface by forceful strokes of an **edged or rough** instrument. In order to scrape off dirt, the bars of Altschul must be edged, have sharp edges, or at least one sharp edge, to clean the brush. Otherwise they could not facilitate cleaning, or the ability to dislodge dirt. As such, the grate could not have rounded cross-members, as they would not facilitate cleaning or the ability to scrape off dirt. Having round cross-members would contradict Altschul.

The grate of Altschul was also not designed to be left in the pool during swimming. The edge(s) used to “scrape off dirt” would be a risk to swimmers. In addition, the design of using spring mounts, mounted to horizontal members to hold it in place, allows the grate to be easily pulled out of the intake. The slightest tug or pull on it by a swimmer would

dislodge it, therefore highlighting its use for assisting the pool cleaning device only.

In addition, per claims 4 and 6, we disagree that the design choice of Altschul could have been altered or within the purview of a skilled artisan to deviate from, based on the following:

Altschul's grate is designed to prevent the cleaner from getting hung up on the skimmer opening while cleaning and more importantly, the grate is used for cleaning the brushes. As the cleaner is moving the brushes along the pool waterline, any deviation from having vertical bars, which are perpendicular to the motion of the brushes, would result in the snagging of the brushes in the grate, or in the case of horizontal bars, would not provide an edge to clean the brushes. Additionally, horizontal bars are not possible in Altschul, by design, as there are no Vertical Members specified by Altschul, to which to attach. Therefore, the bars must be vertical, as specified by Altschul, which are narrowly defined for the purposes of cleaning the brushes. Altschul also specifies a "plurality of vertical bars", which is essential in allowing the pool cleaner to bypass the skimmer intake, as it simulates a solid surface to move over. Again, Altschul's design is narrowly construed to support the function of cleaning the brushes and allowing the pool cleaner to bypass the intake, and any deviation, relative to the current art, would prevent Altschul from being functional.

Therefore, we disagree that the skimmer intake guard would have been obvious at the time of the Altschul, due to the fact the design intent and function of Altschul, would not be achieved.

26. Examiner has rejected claims 2-3 as being disclosed in Altschul (US Pat No 4,429,429) in view of Tilsner (US Pat No 6,716, 342) or Kool (US Pat 5,128,034)

We have reviewed the prior art as provided by Altschul (US Pat No 4,429,429). We disagree that the claim should be rejected over Altschul, due to the above-cited reasons and specific disclosure of Altschul's specific method of how the grate is held in place. The grate is held in place by the force of the springs, which act from the vertical bars to the horizontal members. The use of spring force clearly shows that the grate was never intended to be attached to the intake permanently, but rather temporarily. Its clear purpose and function is the cleaning of the brushes, while it is temporarily in the pool. Also, if Altschul had vertical members (bars – from which to attach hooks) as part of the frame, the full frame would then prevent the vertical bars from being compressed, an essential element of Altschul, which allows it to be quickly installed and released. Therefore, the design and function of Altschul prevents the skilled artisan from make readily obvious changes to Altschul, as it would prevent the function of Altschul. Altschul's design and patent is to hold the grate in place by the use of spring force.

In regard to Tilsner (US Pat No 6,716, 342) and Kool (US Pat 5,128,034), Kool did not prevent the claim of Tilsner, in regard to having hooks in order to, for example, secure one member to another, and therefore, it should not prevent this

claim, as the hooks are only a part of the overall specification, which make the overall skimmer intake guard unique.

In addition, a skilled artisan could not have modified Altschul to include hooks. As previously indicated, Altschul does not have a full frame consisting of vertical members (bars) in which to attach the hooks. Altschul only has horizontal members, to which the vertical bars (attached with a spring mount assembly) are compressed to 1) hold the grate in place; 2) to fit several different opening sizes, and 3) allow it to be quickly removed after cleaning. Altschul could not have been easily modified, as this was its' design intent, and its' design would have had to be different. To change Altschul, one would have to disregard the spring mounts and vertical bars under compression, which is essential to Altschul. In addition, Altschul is not designed to be attached to the skimmer opening, but instead to just reside in the opening by means of compression of the springs against the vertical bars, which hold the horizontal members against the intake. Altschul is intended to be easily compressed and put in and then pulled out and removed after each pool cleaning. Neither Altschul's pool cleaner, brush cleaning grate or ladder guide were intended to be left in the pool after cleaning, as they would all present a risk to swimmers.

Therefore, we disagree that the skimmer intake guard would have been obvious at the time of the Altschul, due to the fact the design intent and function of Altschul could not be achieved, as it would interfere with installation of the grate, and the cleaning of the brushes.

Conclusion

27. While the prior art made of record, Altschul, Kool, and Tilsner, have now been reviewed by the applicant, we believe that the above clarifications and discussion of the prior art, show that the claims of our application have not been disclosed in prior art, and that the amended patent application in response to the Office Action Summary, should be reevaluated.

The skimmer intake guard of the applicant, is unique in its use of a full frame with horizontal and vertical members; from which the hooks attach the guard to the skimmer opening; additionally comprising of a grid of round-shaped cross-members; and would not have been obvious at the time of Altschul, Kool and/or Tisner, or others.